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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057845
Party	Defendant Clariant International AG
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Submission	Motion to Strike
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Date	12/31/2013
Attachments	Clariant's response to motion to strike defenses - canc.pdf(138420 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Multisorb Technologies, Inc.,	:	
	:	
Petitioner,	:	
	:	
v.	:	Canc. No. 92057845
	:	
Clariant International AG,	:	
	:	
Registrant.	:	

**REGISTRANT'S RESPONSE TO PETITIONER'S MOTION TO STRIKE
REGISTRANT'S AFFIRMATIVE DEFENSES**

Registrant Clariant International AG (“Clariant” or “Registrant”) requests that Petitioner’s Motion to Strike Registrant’s Affirmative Defenses be denied on the basis of untimeliness. Registrant served its Answer on Petitioner’s counsel on October 22, 2013 and Petitioner’s motion was not filed until 55 days later, on December 16, 2013. Pursuant to Fed. R. Civ. P. 12(f) and TBMP §506.02, a motion to strike should be filed within 21 days or 26 days - if service by first-class mail, “Express Mail,” or overnight courier - after service of the pleading. In this case, Petitioner’s motion would have been due by November 18, 2013. By submitting its motion on December 16, 2013, Petitioner took more than double the time period allowed to serve its motion to strike and the motion should thus be denied. Petitioner’s delay is not justified by Petitioner’s change in counsel because new counsel conducted the discovery conference on November 22, 2013 and filed the appearance of new counsel on November 25, 2013. Petitioner has not provided any reasonable explanation as to why its motion was delayed beyond the date when it filed its appearance of counsel.

Pursuant to TBMP §506.01 the Board, in its discretion, may decline to strike even objectionable matter from a pleading where the inclusion of the matter will not prejudice the

adverse party, but rather will provide fuller notice of the basis for a defense. *See Ohio State University v. Ohio University*, 51 USPQ2d 1289, 1292 (TTAB 1990); *Order of Sons of Italy in America v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221, 1223 (TTAB 1995). Petitioner has not alleged any prejudice from the affirmative defenses, and Registrant believes that its affirmative defenses are proper and provide Petitioner with notice of the basis of its defense. Therefore, Petitioner's motion should be denied.

Lastly, Registrant notes that pursuant to TBMP §506.01 "motions to strike are not favored, and matter will not be stricken unless it clearly has no bearing upon the issues in the case."

In the alternative, should the Board be inclined to allow Petitioner's motion notwithstanding Petitioner's untimeliness and violation of the rules, Registrant respectfully requests that it be given additional time to respond to the motion more fully and address Petitioner's assertions.

CLARIANT INTERNATIONAL AG

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing ***Registrant's Response to Petitioner's Motion to Strike Registrant's Affirmative Defenses*** has been served upon Petitioner's counsel by e-mail to J. Christopher Lynch at chris@leehayes.com, Rhett V. Barney at rhettb@leehayes.com, julie@leehayes.com and LHLitDocket@leehayes.com on December 31, 2013.

/s/ Katrin Lewertoff
Katrin Lewertoff